IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE SIDE.

CRIMINAL WRIT PETITION NO. 542 OF 2003

Arun Gandhi & others ...Petitioner versus

versus

Yogendra Thakkar & another ...Respondent.

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Shri Mahesh Jethmalani with Pradnyesh G. Sabnis for the petitioners.

Mrs. V.R.Bhosale APP for State.

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CORAM; V.G. PALSHIKAR, J.

DTAED; 22ND JUNE, 2005.

P.C.

1. By this petition the petitioner has challenged the order of the Metropolitan Magistrate, 30th Court, Kurla, Mumbai whereby the process was ordered to be issued on a complaint filed by the respondent Yogendra Naranji Thakkar. The allegations on which the petition is based basically is that the complaint if read as a whole, does not disclose any offence and therefore not maintainable, by several judgments of the Supreme Court of India starting with **State of Haryana Vs. Bhajanlal reported in 1992 Sup. (1) S.C.C. page 335** and ending with **Pepsi Food Ltd. reported in 1998 (5) SCC pagd 749** and some

judgments even thereafter. Primafacie no case is made out and therefore as per the dicta of the Supreme Court of India, the complaint is liable to be quashed at the threshold. This was prayed for before the learned trial court, who thereafter has passed the order impugned in this application.

2. The complaint is under sections 406, 420, 465, 467 and 380 read with 34 and 120-B of the IPC. The allegations running into 10 paragraphs, deals with the commission of these offences by the accused as alleged in the complaint.

3. Para 5 of the complaint reads thus:

> *"The complaint states that the accused nos. 1 to 6 with dishonest and malafide intention in criminal conspiracy with accused nos. 7 to 13 without the consent and knowledge of the complaint prepared Deed of Partnership wherein the accused abovenamed by making false representations that they are representing all the partners formed new firm viz.....By doing this the accused have committed criminal breach of trust in respect of the income and goodwill of the firm."*

4. The contention is that the complaint only recites the words contained in the section of the IPC. Mere such recital is not enough for issuance of process. According to me, the allegations in the complaint are required to be proved and adequate opportubnity to prove the allegations must be afforded to the complainant. It is true that the Supreme Court of India have in several cases observed that the right of the accused or the persons sought to be accused of not being required to face unwanted trial is liable to be protected. It is however equally important that similar right of the complainant to knocking the doors of the court to allege and prove that some criminal case is committed against him and the portion allegedly perpitrating that action are liable to be proceeded with in accordance with the law, is also an important right and he should get an opportunity to prove the allegations made in the complaint. If the allegations are doubted at the thrushold then the exercise of jurisdiction under sec. 482 of Cr.P.C. would be a routine exercise of that power and according to the Supreme Court of India such routine exercise is not advisable.

5. Apart from that in para 9 of the complaint, it is

observed that the accused has also fraudulently obtained signature of one Mr. Mahendra Thakkar on the said Deed of Partnership. This averment is such as can be proved only by evidence that the signature of Mahendra Thakkar has fraudulently obtained. How it is to be proved is for the complainant to decide when the matter reaches the stage of framing charge or thereafter.

6. Then in para 10 the complainant observes as under:

> *"The complaint is not having a control over the income of the firm. Inspite of the demand of the complainant for giving him accounts of the firm. The complainant states that it is not only misappropriates but it amounts to theft of the valuable property of the complainant."*

7. Then following certain allegations the learned Magistrate while issuing process has observed thus:

> *"It is contended that accused Nos.1 to 7 and accused Nos.8 to 13 conspired by fabrication and forging valuable documents and thus misappropriated huge amount from M/s. N.M. Raiji & Co. and thus they have caused*

wrongful loss to the complainant and wrongful gain to them and thus the complainant has been deprived of his shares from the profit of M/s. N.M.Raiji & Co. The complainant has enclosed the partnership deed of M/s. N.M. Raiji & Co. as well as partnership deed in respect of M/s. Gandhi, Dalal & Shah Co. is also enclosed with the complaint. He has also annexed the correspondence between him and the accused. And it is submitted that the process be issued against the accused."

8. Then the learned Magistrate observed that the averments which are made pertain to commission of the offence under 380 IPC, those averments even if accepted as correct, do not make out ingredients of section 380 and therefore has not issued process under 380 IPC.

9. This in my opinion is enough application of mind as required for purposes of issuance of process under section 202 of Cr.P.C. Any further detailed discussion on the assumption that what was stated in the complaint could be true is not the scope and extent of section 202. In Pepsi's case it has been observed by the Supreme Court that where a particular offence is made in the complaint, and it would depend on facts of each case

no interference is necessary. I desist to observe or to say anything further in relation as it would be beyond saying that a primafacie case is made out at the stage of deciding the application under section 482 Cr.P.C. Again the Supreme Court in number of cases held that it is something to be avoided by the High Court in exercising inherent powers under 482 Cr.P.C. It is an established principle under 482 that the power therein though complete should be very sparing exercised. In the instant case, I do not find any reason to conclude that the complaint is such as would require the sparing exercise under 482 Cr.P.C. Hence the petition is dismissed.

10. Ad-interim relief granted earlier shall stand vacated for four weeks hence.

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